

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Applications of WorldCom, Inc. and)
MCI Communications Corporation for)
Transfer of Control of MCI Communications)
Corporation to WorldCom, Inc.)

CC Docket No. 97-211

**Comments of the
COMMUNICATIONS WORKERS OF AMERICA
on the
Proposed Protective Order Filed by WorldCom and MCI**

To: The Commission

As a party in the above-captioned proceeding, the Communications Workers of America (CWA) submits these comments on the Proposed Protective Order filed by WorldCom and MCI. The Proposed Protective Order is too narrowly constructed and would effectively bar CWA and other public interest groups that are parties to this proceeding from access to Stamped Confidential Documents. Therefore, the Commission should modify the Proposed Protective Order, as follows:

1. The Protective Order should include language that would permit access to Stamped Confidential Documents to the following: counsel for the participants, the participant's experts, and employees of the participant's experts or of the participant's counsel who are engaged in

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tasks related to organizing, sorting, filing, coding, converting, retrieving, or designing programs for handling data connected with this proceeding.

The language in MCI/WorldCom's Proposed Protective Order is simply too restrictive, limiting access to outside counsel of record, outside experts, and their clerical, para-legal, or research assistant employees. This language would effectively bar CWA and other public interest groups that are parties in this proceeding from access to the Stamped Confidential Documents. CWA's in-house research economists prepared CWA's comments and reply comments in this proceeding, yet under the Proposed Protective Order language, the CWA in-house staff are not permitted access to the Stamped Confidential Documents. Several public interest groups that are participants in this proceeding also utilized in-house staff to prepare comments; they, too, would be denied access to Stamped Confidential Documents. Clearly, this is not the intent of the Commission. Furthermore, neither CWA, as a labor union, nor the public interest groups that are participants in this proceeding compete with WorldCom or MCI in the marketplace, and therefore there is no danger that we nor the public interest groups would use the information in Stamped Confidential Documents in the competitive market.

CWA recommends as a model the language that the Pennsylvania Public Utility Commission adopted in its Protective Order covering proprietary information provided in its WorldCom/MCI merger review. That language reads as follows:

Proprietary Information made available pursuant to this Protective Order shall be given solely to counsel for the participants, the participants' experts, and Commission staff...Any such expert may be an employee of a participant, provided that such employee's duties

are...dedicated to regulatory activities on behalf of the participant, and such employee's duties are not related to marketing or strategic planning of competitive products or services, including those provided by any participant to this proceeding.

Such language would permit review by all parties to this proceeding, regardless of whether Comments were prepared in-house or by outside counsel or experts, while protecting the legitimate competitive business interests of WorldCom and MCI.

2. The Commission should permit parties that have access to Stamped Confidential Documents to reference information obtained from those documents in communications with the U.S. Department of Justice (DOJ) in addition to communications with the Commission. Since the material in the Stamped Confidential Documents was originally provided by MCI and WorldCom to the DOJ, allowing parties to reference this information in communication before that agency will not result in providing that agency with new information. Thus, it is excessive for the Commission to bar reference to these materials before the agency that has already seen this information.

3. Finally, the Commission should provide a procedure for parties to object to the claim that information is proprietary and confidential. Any participating party should be allowed to object to MCI and WorldCom's claim that information is confidential. The Commission should establish a procedure to adjudicate such objections in an expeditious manner.

Respectfully Submitted,

Communications Workers of America

By Debbie Goldman
Debbie Goldman
Research Economist

May 7, 1998

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint application of WorldCom, Inc.,:	
MCI Communications Corporation, MCI :	Docket Number
Telecommunications Corporation and :	
MCI Metro Access Transmission :	A-312025F0002
Services for approval of merger :	A-310236F0004
through the transfer of stock. :	

PROTECTIVE ORDER

On March 19, 1998, WorldCom, Inc., MCI Communications Corporation, MCI Telecommunications Corporation and MCI Metro Access Transmission Services (joint applicants) filed and served a Motion For A Protective Order in the above-captioned case.

By letter dated March 19, 1998, GTE Corporation and GTE Communications Corporation (joint protestants) made known their objections to the form of proposed protective order attached to joint applicants' Motion For A Protective Order. Similarly, by letter dated March 20, 1998, Communications Workers of America (intervenor) made known its objections to the form of proposed order attached to joint applicants' Motion For A Protective Order.

During a telephone conference with all participants on March 23, 1998, I encouraged them to negotiate the terms of a mutually satisfactory Protective Order for use in this case.

By letter dated March 27, 1998, joint applicants advised me that though the participants had attempted to resolve the issues surrounding a protective order, they had been unable to agree.

On March 30, 1998, joint protestants filed and served their Answer To Motion For A Protective Order. Joint protestants attached a proposed protective order to their Answer To Motion For A Protective Order.

The time for answers to joint applicants' Motion For A Protective Order has now expired, and all participants acknowledge the need for issuance of a protective order in this case.

THEREFORE,

IT IS ORDERED:

1. The materials subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials which a participant or an affiliate of a participant furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures, or cross-examination, or provides as a courtesy to the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate or any other participant, which are claimed to be of a private, proprietary, or confidential commercial or financial nature (Proprietary Information). Proprietary Information shall neither be used nor disclosed except in accordance with this Protective Order. All material claimed to be Proprietary Information must be marked with an appropriate

designation and submitted to the Commission on yellow paper so that it is easily identified for filing purposes.

2. Proprietary Information made available pursuant to this Protective Order shall be given solely to counsel for the participants, the participants' experts, and Commission staff, and shall not be used or disclosed except for the purposes of this case, or as otherwise permitted by subsequent Commission order. Counsel for a participant may authorize access to proprietary information by that participant's experts as follows:

a. Counsel will identify in writing to the providing party each person to whom counsel intends to send Proprietary Information. That identification will be provided not less than three (3) days prior to the time that the information is planned to be sent. Counsel shall provide the person's name, title, job description, and area of expertise. Any such expert may be an employee of a participant, provided that such employee's duties are solely dedicated to regulatory activities on behalf of the participant, and such employee's duties are not related to marketing or strategic planning of competitive products or services, including those provided by any participant to this proceeding.

b. If it is the good faith position of the participant that produced the Proprietary Information that the designated person should not be given access to the Proprietary Information, that participant must respond to the written notice with a written objection.

c. If the participant that proposed that access be given to the designated person does not receive written objection by the participant that produced the Proprietary Information within three (3) days after receipt of the written notice, counsel shall be authorized to provide access to the information to the designated person.

d. If the participant that produced the Proprietary Information objects to access by the designated person to Proprietary Information, the participant that requested such access and the participant that produced the information shall attempt to resolve the objection. If these participants are unable to resolve the objection, either of them may apply to the Administrative Law Judge for a ruling as to the access proposed. In that event, access to the information shall not be given to the designated person pending resolution of the objection by the Administrative Law Judge.

e. The standard to be applied by the Administrative Law Judge in determining a question of expert access to Proprietary Information shall be whether access by the individual in question would be reasonably likely to jeopardize the confidential nature of the information sought. A participant dissatisfied with a decision of the Administrative Law Judge may appeal to the Commission, and, pending appeal, the information shall not be disclosed to the designated person.

f. Any member of the Commission and any member of its staff may have access to any Proprietary Information made

available pursuant to this Protective Order and shall be bound by the terms of this Protective Order.

3. Prior to giving access to Proprietary Information as contemplated in Paragraph 2 above, counsel for the participant seeking to give access of the Proprietary Information shall deliver a copy of this Protective Order to the designated person and such person shall agree in writing to comply with and be bound by this Protective Order. In connection therewith, Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Appendix A. The nondisclosure agreement (Appendix A) shall require the person to whom disclosure is to be made to read a copy of this Protective Order and certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, business address and employer, and the name of the participant with whom the signatory is associated. The executed nondisclosure agreement shall be delivered to counsel for the providing participant and the Commission.

4. This Protective Order establishes a procedure for the expeditious handling of information that the providing participants claim is Proprietary Information, but it shall not be construed as an agreement or ruling on the confidentiality of any such information. A participant to this proceeding or other interested person or entity with proper standing, or the Commission on its own motion, may challenge the providing

participant's claim of confidentiality at any time. Any such Petition or Motion must be served upon the providing participant, and the providing participant may file a response or objection within ten (10) days thereafter. The providing participant's response may also request a hearing or oral argument before the Administrative Law Judge, including the grounds for such request.

a. In the event that the participants are unable to agree that certain documents, data, information, studies or other matters constitute private, confidential or privileged commercial or financial information, the entity objecting to the proprietary claim shall forthwith submit the matter to the Administrative Law Judge for his review. When the Administrative Law Judge rules on the question of whether any documents, data, information, studies or other matters are Proprietary Information, the Administrative Law Judge shall enter an order resolving the issue.

b. Any participant or appropriate person or entity (as described above) may seek by appropriate pleading to have documents that have been designated as Proprietary Information in accordance with this Protective Order removed from the protective requirements of this Protective Order and placed in the public record. If the confidential nature of this information is so challenged, resolution of the issue shall be made by the Administrative Law Judge or the Commission after consideration of briefs or proceedings *in camera*, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such Proprietary Information shall be present. The record of any such *in camera* hearings shall be

marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. A-312025FO002, A-310236FO004." It shall be transcribed only upon agreement of all participants or by order of the Administrative Law Judge or the Commission; and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Protective Order, unless and until released from the restrictions of this Protective Order through agreement of the participants or pursuant to an order of the Administrative Law Judge or the Commission. In the event that the Administrative Law Judge or the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Protective Order, the participants shall not disclose such information or use it in the public record for a period of seven (7) business days thereafter so that the providing participant shall be afforded a reasonable opportunity to seek a stay or other appropriate relief.

5. While in the custody of the Commission, materials subject to this Protective Order shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. A312025FO002, A-310236FO004" and due to their private nature they shall not be considered as records in the possession of or retained by the Commission within the meaning of the open meeting or public records statutes.

6. Where reference to Proprietary Information is required in pleadings, briefs, argument or motions, it shall be by citation to title or exhibit number or some other non-

confidential description. Any further use or substantive reference to Proprietary Information shall be placed in a separate section of the pleading or brief and submitted to the Administrative Law Judge or Commission under seal. This sealed section shall be served only upon counsel (one copy each) who have signed a nondisclosure agreement as set forth in Appendix A. All the protections afforded in this Protective Order apply to materials prepared and distributed pursuant to this paragraph.

7. In all references, the Administrative Law Judge or the Commission shall attempt to refer to Proprietary Information in only a general or conclusory form, and, to the greatest extent possible, shall avoid reproducing Proprietary Information in any decision or ruling. If it is necessary to discuss Proprietary Information in greater detail, it shall be placed in a separate section of the referencing document, under seal. This sealed section shall be served only on counsel (one copy each) who have signed a nondisclosure agreement as set forth in Appendix A. Counsel for other participants shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission after signing a nondisclosure agreement as set forth in Appendix A.

8. If deemed necessary by the Administrative Law Judge or the Commission, the providing participant shall prepare a written summary of the Proprietary Information referred to in the referencing decision or order for placement on the public record.

9. All Proprietary Information filed with the Commission shall be sealed by the Commission, segregated in the files of the

Commission, and withheld from inspection by any person not bound by the terms of this Protective Order, unless such Proprietary Information is released from the restrictions of this Protective Order either through agreement of the participants, an order of the Commission or an order of a Court having jurisdiction.

10. All persons or entities who may be entitled to receive, or who are afforded access to, any Proprietary Information by reason of this Protective Order shall neither use nor disclose the Proprietary Information for purposes of business or competition, or any purpose other than those described in Paragraph 2 above, and then solely as contemplated herein, and shall take reasonable precautions to keep the Proprietary Information secure and in accordance with the purpose and intent of this Protective Order.


11. Any person or entity with proper standing affected by the terms of this Protective Order retains the right to question, challenge, and object to the admissibility (in any proceeding before the Commission or other appropriate body) of any information furnished under the terms of this Protective Order on the grounds of relevancy or materiality. This Protective Order shall in no way constitute any waiver of the rights of any interested person or entity to contest any assertion or finding on the right of privacy, confidentiality or privilege, and to appeal any such determination of the Commission.

12. The Commission retains jurisdiction of this matter and may alter or amend the provisions of this Protective Order upon

motion by an appropriate person or entity and upon reasonable notice.

Date:

APRIL 1, 1998


Wayne L. Weismandel
Administrative Law Judge